Editor's note: Appealed – aff'd, Civ. No. LV-2112 (D. Nev. Aug. 29, 1975), amended order judgment for defendant (Sept. 4, 1975), vacated and remanded, No. 75-3476 (9th Cir. Oct. 21, 1977) 563 F.2d 413

ELAINE S. STICKELMAN

IBLA 72-356 Decided February 13, 1973

Appeal from a Nevada State Office decision denying an application for extension of the date for filing a desert land entry final proof.

Affirmed.

Desert Land Entry: Extension of Time

An application for an extension of time for the submission of final proof of a desert land entry is properly rejected where the entrywoman is unable to show that her failure to reclaim the land in her entry within the statutory life of the entry is due, without fault on her part, to unavoidable delay in the construction of irrigation facilities intended to convey water to the entry, and where it appears, rather, that the failure resulted largely from her neglect to do the necessary work.

Desert Land Entry: Extension of Time

A second extension of time to file final proof on the desert land entry is properly denied to an entrywoman who fails to show that she utilized a first extension in a reasonable effort to correct deficiencies in her water supply.

Desert Land Entry: Cancellation

A desert land entry is properly canceled when it is clear that the entrywoman did not effect compliance with requirements of the desert land law for reclamation and cultivation of the entry during the statutory life of the entry and any extensions that may have been granted.

Rules of Practice: Hearings

A request for a hearing is properly denied where the pertinent statute does not require one, there is no constitutional necessity to hold one, and the claimant fails to allege the existence of facts which, if proved, would entitle her to the relief sought.

APPEARANCES: Daniel R. Walsh, Esq., Carson City, Nevada, for appellant.

OPINION BY MR. RITVO

Elaine S. Stickelman has appealed from a decision by the Nevada State Office (Nev. 061603) dated March 10, 1972, denying her application for a second extension of time in which to make final proof on her desert land entry Nevada 061603. In her appeal, Stickelman prays for the right to a hearing before this Board, the recision of the State Office decision of March 10, 1972, and the subsequent granting of her extension request.

Mrs. Stickelman initially filed a desert land entry application on December 3, 1963, for approximately 320 acres located in S 1/2 SE 1/4 sec. 34, T. 4 N., R. 48 E., and NE 1/4, NE 1/4 SW 1/4, NW 1/4 SE 1/4 sec. 3, T. 3 N., R. 48 E., M.D.M., Nevada. On October 29, 1965, these lands were officially classified for entry under the Desert Land Act of March 3, 1877, 43 U.S.C. §§ 321-323 (1970). The classification was supported by field data indicating that the lands were suitable for reclamation by irrigation and that adequate ground water was available at a reasonable depth to irrigate the subject lands. Mrs. Stickelman's entry was allowed on February 18, 1966, with final proof due not later than 4 years from that date. 43 U.S.C. § 328 (1970).

In a letter dated December 2, 1969, Mrs. Stickelman requested an extension of time for filing her final proof. Citing inability to obtain adequate electrical power to run irrigation pumping motors, the entrywoman asked for additional time to obtain the necessary power sources so that the irrigation well could be put in proper operation. The entry allegedly was fenced and plowed, had a 306 foot deep 16 inch well with a 2400 GPM capacity, and was provided with living quarters, domestic water well, and a shop. Determining that Mrs. Stickelman had submitted sufficient reasons to justify the granting of an extension, the Bureau of Land Management, pursuant to the Act of March 28, 1908, 43 U.S.C. § 333, granted her a two-year extension of time to make final proof, that is until February 18, 1972.

Mrs. Stickelman's second request for an extension of time was submitted on February 10, 1972. She claimed that illness and hospitalization in the spring of 1970, August 1970 and May 1971, prevented her from complying with the due date of the first extension.

Memoranda discussing Mrs. Stickelman's entry and her request for an extension were submitted to the State Office by Richard Hopkins, a Bureau of Land Management Range Conservationist. In the first, dated October 27, 1971, Hopkins stated that no work

had been done on the entry since December 1969, two months before Stickelman's original final proof date. He continued as follows:

> * * * Electrical power has been available since this time, and Southern California Edison and Sierra Pacific Power have completed their transfer. The trailer houses on the entry were removed in the spring of 1970, one equipment building still remains, and the gear head has been removed from the well. It stands with just a casing in the ground and a five gallon bucket over the top of it. No attempt has been made to raise a crop or irrigate. No irrigation pipe is on the entry, and no irrigation ditches have been developed. The entry has been completely abandoned since December 1969.

In his second memorandum, dated March 2, 1972, Hopkins stated that a field investigation on February 15, 1972, revealed no changes. He also commented that Mrs. Stickelman may have made false statements in her first application for an extension because inquiry revealed that neither Sierra Pacific Power Company nor Southern California Edison had any record of a request by Mrs. Stickelman for additional service. Hopkins concluded by recommending that Mrs. Stickelman's application for a two-year extension of time be denied and the entry canceled.

The State Office's decision was announced on March 10, 1972. Based on Hopkins' research and field investigation, the Office rejected Mrs. Stickelman's application and canceled her entry. The deciding paragraph on the opinion states:

> The entrywoman has not shown that failure to reclaim and cultivate the land was unavoidable and due to reasons beyond her control. Therefore, an extension of time cannot be granted and the application is hereby rejected.

Mrs. Stickelman filed her appeal and statement of reasons on April 6, 1972, and on April 24, 1972, respectively. She asserts that:

> 1. She has complied in all respects to the best of her abilities to conform to federal statutes and all applicable regulations.
>
> 2. Her failure to submit final proof has been due to unexpected circumstances wholly beyond her control within the contemplation of 43 CFR 2522.3 and relevant other sections.

3. Appellant is presently able to commence farming and make her final proof if given the opportunity.

4. Appellant has expended personal sums in excess of the amount of eighteen thousand ($18,000.00) dollars of her personal funds to sink wells, purchase irrigation equipment and otherwise facilitate farming operations for the land in question.

5. That such peremptory, out-of-hand denial of time extension as is fully within the power of the Department and the Bureau to give, and without hearing amounts to the confiscation of the improvements made upon the land by appellant without due process or even basic fairness, and as such is in violation of the most basic precepts of the United States Constitution.

Both the Act of March 28, 1908, 43 U.S.C. § 333 (1970), under which the first extension was granted, and the Act of April 30, 1912, 43 U.S.C. § 334 (1970), under which the pending request was filed provide that an extension may be granted, in the discretion of the Secretary, if it is shown to his satisfaction that because of unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry, the entryman is, without fault on his part, unable to make proof of the reclamation and cultivation of such land within the time limited therefore. The pertinent regulations repeat the statutes, 43 CFR 2522.3, and 2522.7(a).

We find that appellant has not offered reasons sufficient to justify another extension. As to her first contention compliance to the best of one's ability may not necessarily satisfy the statutory requirements. Further, while Mrs. Stickelman allegedly attempted to comply to the best of her abilities, conflicting statements by Hopkins raise doubts regarding her good faith effort at compliance. Second, it is the opinion of this Board, that Mrs. Stickelman's failure to submit the final proof was not caused by circumstances beyond her control. The statements from her doctor do attest to some disability from an ear infection and resulting surgery. However, Mrs. Stickelman could have contacted Sierra Pacific or Southern California Edison to provide the additional service necessary for adequate irrigation. She could also have contracted to have the cultivation and irrigation services performed. Hopkins' inspections revealed that neither Sierra Pacific nor Southern California Edison had been contacted by Mrs. Stickelman for additional service. Also, there was no evidence of any work being done on the entries since December 1969. To the contrary, the physical evidence on the ground indicates that effort has been expended to actually curtail

or discontinue the reclamation of the land. This Board does not view Mrs. Stickelman's illness in the latter part of 1970 and in 1971 as satisfying the requisite unavoidable delay for the granting of an extension of final proof. An application for an extension of time for the submission of final proof of a desert land entry is properly rejected where the entrywoman is unable to show that her failure to reclaim the land in her entry within the statutory life of the entry is due, without fault on her part, to unavoidable delay in the cultivation and construction of irrigation works. Charles T. McCormack, A-30717 (June 30, 1967); Mathilda L. Battilana, A-30558 (Aug. 2, 1966); Paul I. Kochis, A-30427 (Oct. 26, 1965). While we do not expect Mrs. Stickelman to have done the work herself, she unnecessarily caused a two-year delay by failing to contact anyone to complete the work in her absence. A second extension of time to file final proof is properly denied to an entrywoman who fails to make use of the first extension granted to her because of unavoidable delay. Wayne E. Bright, A-30475 (February 4, 1966).

Third, the appellant's statement of present readiness to commence farming has no bearing since she has failed twice before to follow through on her statutory obligations. Fourth, the alleged expenditure of $18,000 on the entry does not mitigate Stickelman's failure to show any attempt at utilizing her first extension. These expenses were incurred during appellant's original entry upon the land.

Finally appellant's contention that a denial of her request for a hearing amounts to confiscation of her improvements or a denial of basic fairness is without merit. Similar charges have been answered in previous Departmental decisions. The pertinent statutes do not require a hearing. Since the granting of the extension is within the discretion of the Secretary, there is no requirement for a hearing in the constitutional sense. Ferris F. Boothe, 66 I.D. 395, 398 (1959). A request for a hearing is properly denied where the claimant fails to allege the existence of facts which, if proved, would entitle her to the relief sought. Jack A. Walker, A-30492 (April 28, 1966); Meadowbrook Lodge, Inc., A-30432 (October 27, 1965). As we discussed above Stickelman raised no contentions which, if established, would warrant a reversal of the State Office's decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

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Martin Ritvo, Member

We concur:

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Edward W. Stuebing, Member

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Douglas E. Henriques, Member